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Attorneys for Defendant CoinMarketCap OpCo, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Ryan Cox, individually and on behalf of
all others similarly situated,

Plaintiff,

V.

CoinMarketCap OpCo, LLC; BAM
Trading Services Inc. d/b/a Binance.US;
and Does I-X;

Defendants.

Case No. 3:21-cv-08197-SMB

**DEFENDANT
COINMARKETCAP OPCO,
LLC'S REPLY IN SUPPORT OF
ITS MOTION TO DISMISS THE
FIRST AMENDED CLASS
ACTION COMPLAINT**

1 All of Cox's claims rest on the same fundamental allegation that CMC has been
 2 improperly ranking cryptocurrencies on its website. Cox's complaint should be dismissed
 3 with prejudice because this core allegation runs headlong into the Communications
 4 Decency Act ("Section 230"), which bars all claims based on how a website decides to
 5 present and curate third-party information, like the cryptocurrency data CMC obtains from
 6 other sites and sources and displays on its home page. Because the gravamen of Cox's
 7 claims involves the way CMC presents third-party information, those claims are dead on
 8 arrival and no amount of amending can possibly resuscitate them.

9 Additionally, Cox alleges that since September 2020 CMC has been falsely
 10 representing on its website that it ranks all cryptocurrencies based solely on their market
 11 capitalizations ("market cap"). This allegation is implausible on the face of CMC's *About*
 12 page (attached as **Exhibit 1**), which Cox relies upon in his First Amended Complaint
 13 ("FAC").¹ FAC ¶¶ 14, 20, 25, 69, 200, 217, 255 (all quoting CMC's *About* webpage); see
 14 also ECF No. 108 ("Opp. Br.") at 2 (same). Contrary to Cox's allegations, CMC's *About*
 15 page does not state that CMC ranks cryptocurrencies based solely on market cap. To the
 16 contrary, even before the Suppression Period, the *About* page included the following
 17 description of CMC's ranking policies:

21 ¹ Cox quotes CMC's *About* page, so the "court may treat [it] as part of the complaint and
 22 thus may assume that [its] contents are true for purposes of a motion to dismiss under Rule
 23 12(b)(6)." *SinglePoint Direct Solar LLC v. Curiel*, 2022 WL 331157, at *3 (D. Ariz. Feb.
 24 3, 2022) (citation omitted). Courts now customarily take judicial notice of webpage
 25 archives from the Wayback Machine. *Erickson v. Neb. Mach. Co.*, 2015 WL 4089849, at
 26 *1 n.1 (N.D. Cal. July 6, 2015) ("Courts have taken judicial notice of the contents of web
 27 pages available through the [] Wayback Machine as facts that can be accurately and readily
 28 determined from sources whose accuracy cannot reasonably be questioned."); *Saeedy v. Microsoft Corp.*, 757 F. Supp. 3d 1172, 1194 (W.D. Wash. 2024) (collecting cases); *World Nutrition Inc. v. Advanced Enzymes USA*, 2019 WL 5802001, at *2 (D. Ariz. Nov. 7, 2019)
 (taking judicial notice of Wayback Machine archives).

- 1 • CoinMarketCap strictly follows and enforces its independent [*listing criteria guidelines*](#), circulating [*supply calculation methods*](#) and [*liquidity score*](#) for how it ranks cryptoassets[; and]
- 2
- 3 • CoinMarketCap's official [*ranking criteria*](#) is designed to eliminate any possibility of preferential treatment in general, even for the Binance exchange or BNB cryptoasset.
- 4
- 5

6 Exhibit 1.² Clicking on the *ranking criteria* link takes one to the *Ranking* page, attached
 7 as **Exhibit 2**,³ which states that:

8 [A] project's eligibility for a Top 200 Cryptoasset Rank will now be determined by market capitalization and the following factors:

- 9 1. Our ability to verify the project's supply information with no incongruities
- 10 2. Strengths in a number of areas of Listings Review Criteria's [*Section C \(Evaluation Framework\)*](#) below
- 11 3. Significant liquidity/trading activity with normal bid-ask spreads across sufficient sources of market data
- 12 4. Absence of significant price discrepancies across CMC-supported exchanges
- 13 5. The asset is traded on at least three non-decentralized exchanges that possess a number of the following attributes: publishes granular API endpoints[;] Active product development and communications from the team[;] Active/engaged community of a considerable size[;] Accredited/Audited by a credible 3rd party[;] DATA Partner[; and] Regulated/Licensed.
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19 Clicking on the *Section C (Evaluation Framework)* link takes one to the *Listing Criteria*
 20 page (also linked on the *About* page), attached as **Exhibit 3**, which lists eight more non-
 21 market-cap ranking criteria. Thus, the *About* page clearly conveys that CMC employs a
 22 complex multi-factor ranking algorithm, not a single "market-cap only" ranking system.

23 ² Exhibit 1 reflects the *About* page as it existed on September 19, 2020, which predates the
 24 alleged Suppression Period beginning between September 20 and 27, 2020. FAC ¶¶ 85–86.

25 ³ See *Abboud v. Circle K Stores Inc.*, 731 F. Supp. 3d 1094, 1100 (D. Ariz. 2024)
 26 (incorporating hyperlinked webpage within document relied on in complaint). Not every
 27 webpage is archived every day, and the *Ranking* page was not archived on September 19,
 28 2020. Exhibit 2 shows the *Ranking* page as it existed on September 25, 2020, the closest
 available date to September 19, 2020.

1 Cox's claim that CMC began suppressing HEX's rank around September 20, 2020,
 2 by removing HEX from its homepage is also belied by CMC's homepage itself. Like
 3 CMC's *About* page, CMC's homepage is cited and screenshotted in the FAC and therefore
 4 may be considered on a motion to dismiss. FAC ¶¶ 45, 78–80, 87; *A.S. v. SelectQuote Ins.*
 5 *Servs.*, 2024 WL 3881850, at *3–4 (S.D. Cal. Aug. 19, 2024) (incorporating websites
 6 referenced in complaint and finding that “[t]he incorporation-by-reference doctrine
 7 prevents plaintiffs from selecting only portions of documents that support their claims,
 8 while omitting portions of those very documents that weaken—or doom—their claims.”).
 9 Archives of CMC's homepage are attached as the page existed on January 1, 2020 (**Exhibit**
 10 **4**); February 1, 2020 (**Exhibit 5**); March 1, 2020 (**Exhibit 6**); April 1, 2020 (**Exhibit 7**);
 11 July 1, 2020 (**Exhibit 8**); September 1, 2020 (**Exhibit 9**); and September 19, 2020 (**Exhibit**
 12 **10**).⁴ HEX does not appear on CMC's homepage in any of these screenshots, all of which
 13 were taken *before the alleged Suppression Period*. See Exhibits 4–10; FAC ¶¶ 16, 20. This
 14 is because HEX did not qualify for inclusion in the top 200 cryptocurrencies under CMC's
 15 ranking criteria even before the Suppression Period, and even before Cox alleges Binance
 16 acquired an interest in CMC in April 2020. FAC ¶¶ 16, 18, 20. This renders Cox's entire
 17 suppression theory implausible, justifying dismissal of all claims with prejudice.

18 But even if Cox's allegations were not clearly belied by the exact documents he
 19 quotes and relies upon, his claims are all irredeemably legally deficient under the relevant
 20 statutes. For his CEA claim, Cox's alleged spot market sales of HEX are neither “interests
 21 in a commodity pool” nor “contract[s] of sale of any commodity for future delivery,” so he
 22 has no private right of action against CMC. For his ACFA claim, Cox does not allege any
 23 personal reliance or factually false statement on CMC's website. For his Sherman Act
 24 claims, Cox alleges neither restraint in a market where CMC and Hex compete (antitrust
 25 market), nor an injury in a market where competition was restrained (antitrust injury).

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 27
 28 ⁴ CMC requests the Court take judicial notice of these archives. *See supra* note 1.

1 Cox has had four years to hone his allegations and an opportunity to amend. Yet,
 2 those allegations remain implausible and internally inconsistent. All his claims arise from
 3 a misrepresentation theory belied by the very CMC webpages upon which he relies. *Lynch*
 4 *v. Express Scripts Holding Co.*, 2025 WL 2224419, at *3 (N.D. Cal. Aug. 5, 2025) (“When
 5 a general conclusion in a complaint contradicts specific facts retold in a document attached
 6 to the complaint, incorporated by reference in the complaint, or subject to judicial notice,
 7 those specific facts are controlling.” (quoting *In re Finjan Holdings, Inc.*, 58 F.4th 1048,
 8 1052 n.1 (9th Cir. 2023))). As a result, the FAC should be dismissed with prejudice.

9 **ARGUMENT**

10 **I. COX’S CLAIMS ARE BARRED BY SECTION 230 OF THE CDA.**

11 Cox does not dispute that Section 230 bars claims arising from publishing third-
 12 party content. Opp. Br. at 17 (“Cox does not seek to hold CMC liable for publishing third
 13 party content”); *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1101–02, 1105 (9th Cir. 2009). But
 14 publishing third-party content is precisely what CMC is doing. CMC does not—and could
 15 not—generate price and volume data for cryptocurrencies itself. Instead, CMC curates and
 16 publishes cryptocurrency information it receives from other sites and sources. The law is
 17 unambiguous that this type of data—equivalent to stock prices and volumes—is third-party
 18 content. *Ben Ezra, Weinstein & Co. v. AOL*, 206 F.3d 980, 985–86 (10th Cir. 2000).

19 Section 230 protects CMC from all of Cox’s claims because they all hinge on Cox’s
 20 objection to where and how CMC decides to present HEX’s pricing information on its
 21 website, specifically CMC’s decision not to present HEX’s information on CMC’s
 22 homepage. FAC ¶¶ 79–80, 90–91, 104. This is precisely the type of “subjective, editorial
 23 decision” about where and how to show (or not show) third-party content that Section 230
 24 is intended to protect. *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1096, 1098
 25 (9th Cir. 2019). In fact, Section 230(c)(1) specifically covers a website’s decision to
 26 remove, screen, or hide content, which is exactly what Cox accuses CMC of doing. *Fair*
 27 *Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1170–71
 28 (9th Cir. 2008) (*en banc*) (“[A]ny activity that can be boiled down to deciding whether to

1 exclude material . . . is perforce immune under section 230.”). As a result, Section 230
 2 bars Cox’s claims and requires dismissal of his Complaint with prejudice. *See Sikhs for*
 3 *Just., Inc. v. Facebook, Inc.*, 697 F. App’x 526, 526 (9th Cir. 2017).

4 **II. COX FAILS TO PLAUSIBLY ALLEGE A VIOLATION OF THE CEA.**

5 First, the CEA’s private right of action does not extend to the spot market HEX
 6 trades that Cox conducted. Cox tries to avoid this inevitability by suggesting HEX could
 7 be a trading pool or contract for future delivery. Opp. Br. at 5–6. Plainly, HEX is neither,
 8 and Cox cites no case in which any court allowed a private right of action under the CEA
 9 for the type of spot market cryptocurrency trades Cox alleges he made. FAC ¶¶ 10–11.

10 A Commodity Pool is an “investment trust, syndicate, or similar form of enterprise
 11 operated for the purpose of trading in commodity interests,” 7 U.S.C. § 1a(10), or the “the
 12 commodity-futures equivalent of a mutual fund,” *Rosenthal & Co. v. CFTC*, 802 F.2d 963,
 13 965 (7th Cir. 1986). HEX is not a mutual fund or “enterprise” at all. HEX is a commodity,
 14 not a commodity pool. Regardless, the private right of action under the CEA only extends
 15 to the operators of such pools. *Nicholas v. Saul Stone & Co. LLC*, 224 F.3d 179, 186–88
 16 (3d Cir. 2000). CMC is not the operator of HEX, so Cox has no private right of action
 17 against CMC under the CEA.

18 Cox’s assertion that his HEX trades could be futures contracts is equally spurious
 19 because the FAC does not allege Cox ever contracted for future—rather than immediate—
 20 delivery of HEX.⁵ And even if Cox had traded futures contracts, his theory of liability
 21 against CMC would still fail because Cox does not allege that CMC published or
 22 suppressed the prices of HEX futures. Instead, CMC only publishes spot prices. The fact
 23 that HEX can be “staked”⁶ does not change this outcome. Staking—and other lock-up

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 26 ⁵ See 7 U.S.C. 1a(27) (excluding mere delayed deliveries from the term “future delivery”).
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 28 ⁶ See *Samuels v. Lido Dao*, 757 F. Supp. 3d 951, 957–58 (N.D. Cal. 2024) (explaining
 staking mechanism).

1 mechanisms—affect whether and when you can sell an asset, not when you take ownership
 2 of it. *See Berk v. Coinbase, Inc.*, 2018 WL 5292244, at *2 (N.D. Cal. Oct. 23, 2018).

3 Second, Cox fails to plausibly allege that CMC caused a decrease in the price of
 4 HEX, especially since CMC does not even link to a place where one can trade it. Cox
 5 reiterates his allegation that CMC is “the most-relied-upon cryptocurrency ranking
 6 website,” Opp. Br. at 7, but that does not mean CMC’s rankings impact trading volumes.
 7 Cox’s own allegations contradict such a causation theory. For example, Cox alleges that
 8 institutional investors—*i.e.*, high volume traders that can move prices—have “spurned”
 9 CMC and do not use it. FAC ¶ 21; Opp. Br. at 2. And Cox’s discussion of the economic
 10 concept of a liquidity premium, Opp. Br. at 7–8, is irrelevant because Cox concedes that
 11 HEX is “heavily traded,” FAC ¶ 115, implying it has plenty of liquidity and sellers do not
 12 need to offer a discount to attract buyers. Given this liquidity, there is no reason a higher
 13 ranking from CMC would motivate buyers to buy HEX more than it would motivate sellers
 14 to sell HEX. If both buyers and sellers are equally influenced by CMC’s rankings—and
 15 Cox provides no reason to believe otherwise—CMC’s rankings would not alter the relative
 16 supply and demand of HEX and therefore would not alter its price.

17 Third, Cox fails to plausibly plead that HEX had an “artificial price.” Cox alleges
 18 that HEX’s price during the Suppression Period was artificial because it was altered by a
 19 false statement CMC made about HEX in the form of a ranking different than what HEX
 20 would have had based on market cap alone. Opp. Br. at 8–9. But CMC never made a false
 21 statement about HEX because CMC’s rankings are an opinion. ECF No. 107 (“**Motion**”)
 22 at 6. Regardless, CMC never stated that its rankings were based solely on market cap. To
 23 the contrary, the CMC webpages Cox relies upon in the FAC—CMC’s *About* page and
 24 homepage—establish that CMC used a multi-factor algorithm to rank cryptocurrencies.
 25 Cox does not allege CMC failed to abide by this algorithm with respect to the ranking of

1 HEX or any other cryptocurrency.⁷ Since CMC made no false statement, even if its
 2 rankings impacted the price of HEX, that price would not be “artificial.”

3 Fourth, Cox fails to create a “strong inference” that the “dominant purpose” of
 4 CMC’s rankings was to harm HEX, as required to plausibly plead intent. *In re Amaranth*
 5 *Nat. Gas Commodities Litig.*, 587 F. Supp. 2d 513, 535–36 (S.D.N.Y. 2008). Cox’s only
 6 factual allegation for such intent is that HEX competed with Binance’s cryptocurrencies,
 7 thereby giving *Binance* a general profit motive to harm HEX. But every company has a
 8 profit motive to harm its competitors, so that by itself cannot be enough to plausibly infer
 9 an intent to commit a tort. *See Defer LP v. Raymond James Fin., Inc.*, 654 F. Supp. 2d
 10 204, 217 (S.D.N.Y. 2009) (“[A] generalized motive that could be imputed to any for-profit
 11 endeavor [is] not sufficiently concrete for purposes of inferring *scienter*.” (emphasis in
 12 original)). Regardless, Cox cannot simply attribute Binance’s intent to CMC without
 13 piercing the corporate veil, which he does not even attempt to do. Cox therefore fails to
 14 plausibly imply that CMC itself had the requisite scienter for a CEA violation.

15 Fifth, Cox fails to plausibly allege that he suffered harm as a result of the HEX price
 16 suppression he alleges. Cox argues he is not alleging bidirectional manipulation, Opp. Br.
 17 at 12–13, but CMC never suggested he was. Instead, CMC explained that if Cox purchased
 18 more HEX than he sold during the Suppression Period, then he would have benefited from
 19 the alleged suppression. Motion at 8. Despite four years of litigating this case, the FAC
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21 ⁷ Cox argues it is unclear why CMC attached archives of its *About*, *Ranking*, and *Listing*
 22 *Criteria* pages to its Motion, but the reason is crystal clear: Cox relies on these documents,
 23 so they are incorporated into his FAC, and the face of these documents definitively
 24 establishes that CMC was not ranking cryptocurrencies based solely on market cap, thereby
 25 rendering Cox’s entire case implausible. On reply, CMC separates these pages into separate
 26 exhibits and proffers them from dates prior to or at the very beginning of the alleged
 27 Suppression Period in order to clarify precisely what page is being archived on what day
 28 and to show that CMC’s representations regarding its ranking criteria predate the
 Suppression Period. These pages are not “buried” or hard to find as Cox asserts in his
 opposition brief. Opp. Br. at 10, 12. Cox himself quotes the *About* page, which is linked
 from the bottom of CMC’s homepage. The *About* page contains prominent links to the
Ranking and *Listing Criteria* pages.

1 still does not include sufficient detail regarding how much HEX Cox traded and when to
 2 plausibly establish that Cox was actually injured under his own theory of liability.

3 III. COX FAILS TO PLAUSIBLY ALLEGE A VIOLATION OF THE ACFA.

4 Cox's ACFA claim lacks a plausible allegation of a false statement, personal
 5 reliance, or an advertisement, all of which are required for an ACFA claim. *Watts v.*
 6 *Medicis Pharm. Corp.*, 365 P.3d 944, 953 (Ariz. 2016).

7 First, while Cox claims CMC should have been ranking HEX and other
 8 cryptocurrencies solely based on their market caps, Cox does not—and cannot—point to
 9 any place where CMC actually stated that its ranking were based solely on market cap.
 10 Before and during the alleged Suppression Period, CMC clearly explained its ranking
 11 criteria, which included not just market cap but many other factors. Exhibits 1–3. Thus,
 12 Cox has not plausibly pleaded a false statement. Cox cannot build his case on the purely
 13 fabricated allegation that CMC was purporting to rank cryptocurrencies solely by market
 14 cap when that allegation is contradicted by the very *About* page on which he relies. See
 15 *Lynch*, 2025 WL 2224419, at *3. Cox alleges that CMC entitled its rankings “Today’s
 16 Cryptocurrency Prices by Market Cap,” Opp. Br. at 13, but the archives of CMC’s
 17 homepage establish that this was not the case during, or even before, the Suppression
 18 Period. By July 2020 (three months before the Suppression Period), the title above the
 19 rankings on CMC’s homepage was “Top 100 Cryptocurrencies by Market Capitalization,”
 20 which accurately conveys that the Top 100 cryptocurrencies on the homepage were
 21 arranged by their respective market caps. See Exhibit 8. And any ambiguity regarding this
 22 title is clarified by CMC’s *About* page which clearly describes the criteria CMC uses to
 23 rank cryptocurrencies. There was no materially false statement and therefore no basis for
 24 an ACFA claim.

25 Second, even if Cox could plausibly allege a false statement, he does not allege he
 26 relied upon it. Cox does not allege that he personally relied upon, or ever even saw, CMC’s
 27 rankings, let alone around the time he was purchasing and selling HEX. This is fatal to his
 28 ACFA claim, which requires personal reliance. *Theodosakis v. Clegg*, 2017 WL 1294529,

1 at *20–21 (D. Ariz. Jan. 30, 2017). Cox asks for leave to amend on this issue, but no new
 2 allegation could establish reliance. If Cox pleads that he relied on CMC’s website when
 3 purchasing HEX, then that reliance occurred *prior* to the Suppression Period, and therefore
 4 prior to any alleged false statement. And if Cox pleads that he relied on CMC’s website
 5 during the Suppression Period, that would necessitate the nonsensical inference that Cox
 6 was motivated to *sell* HEX because of its artificially *low* price. In short, because Cox sold,
 7 not purchased, during the alleged Suppression Period, he cannot plausibly plead personal
 8 reliance on CMC’s website.

9 Third, Cox does not plausibly plead any connection between CMC’s rankings and
 10 any advertisement. There is no factual dispute here—the parties agree that CMC was
 11 simply listing price information for cryptocurrencies on its website. And Cox cannot turn
 12 these listings into advertisements by fiat. Nothing about these listings could reasonably be
 13 construed as an attempt to “induce” anyone to buy any particular cryptocurrency or even
 14 cryptocurrencies in general. Just like a stock ticker under a TV news program (which now
 15 often include cryptocurrency prices) or stock listings in a newspaper, CMC’s listings are
 16 not advertisements. Cox even quotes CMC’s statement that it is a “price-tracking website
 17 for cryptoassets” with the goal of “empowering retail users with unbiased, high quality and
 18 accurate information for drawing their own informed conclusions.” FAC ¶ 14. This is not
 19 an attempt to induce anyone to do anything. If it were, then every Google results page
 20 would be an advertisement for the websites Google lists. That is clearly not the case.

21 Since Cox cannot plausibly plead a false statement, personal reliance, or a
 22 connection to an advertisement, his ACFA claims fail as a matter of law.

23 **IV. COX FAILS TO PLAUSIBLY ALLEGE A SHERMAN ACT VIOLATION.**

24 A Sherman Act Section 2 claim requires, at a minimum, an antitrust market,
 25 exclusionary conduct, and an antitrust injury. *Aerotec Int’l, Inc. v. Honeywell Int’l, Inc.*, 4
 26 F.Supp.3d 1123, 1136–37 (2014), *aff’d*, 836 F.3d 1171 (9th Cir. 2016). Cox has plausibly
 27 pleaded none of these.

1 First, Cox alleges the relevant antitrust market is “the market for cryptocurrency
 2 ranking and information services,” FAC ¶ 154, Opp. Br. at 16, but this market is
 3 incongruous with his antitrust claims against CMC. Nothing about CMC’s alleged
 4 suppression of HEX would help CMC monopolize the market for cryptocurrency ranking
 5 and information services. Any impact of the alleged suppression would be felt in the totally
 6 different market for HEX itself, a market CMC does not participate in and certainly is not
 7 monopolizing or attempting to monopolize. Thus, Cox has not even defined a plausible
 8 antitrust market for his antitrust claims.

9 Second, the alleged suppression of HEX’s ranking is not “exclusionary conduct”—
 10 it is not an attempt to restrain competition—so it is not a violation of Section 2 of the
 11 Sherman Act. *Ellis v. Salt River Project Agric. Improvement & Power Dist.*, 432 F. Supp.
 12 3d 1070, 1091–92 (D. Ariz. 2020). Nothing about CMC’s alleged suppression of HEX’s
 13 ranking harms competition, let alone competition in the antitrust market for cryptocurrency
 14 ranking and information services. Thus, even if his suppression theory were correct, Cox’s
 15 invocation of the Sherman Act is misplaced and inappropriate.

16 Third, while Cox makes the conclusory statement that CMC’s alleged “wrongdoing
 17 affected competition as a whole,” Opp. Br. at 16, this is not the test for establishing antitrust
 18 injury. Instead, a plaintiff suffers an antitrust injury only if he is personally harmed “in the
 19 market where competition is being restrained.” *Am. Ad Mgmt., Inc. v. Gen. Tel. Co. of
 20 Cal.*, 190 F.3d 1051, 1057 (9th Cir. 1999). Cox does not participate in the market for crypto
 21 ranking and information services—he does not buy or sell these services, nor does he allege
 22 he even saw CMC’s rankings—so he was not injured in this market. Therefore, he has not
 23 suffered an antitrust injury and cannot bring antitrust claims under the Sherman Act.

24 The Court should reject Cox’s inartful attempt to hammer a square false statement
 25 allegation into a round antitrust cause of action.

26 V. ANY AMENDMENT WOULD BE FUTILE

27 Cox asks the Court for a second chance to amend, Opp. Br. at 17, but no amendment
 28 can fix his claims’ numerous fatal flaws. The Court’s discretion in denying leave to amend

here “is particularly broad” because Cox “has previously filed an amended complaint.” *Zunum Aero, Inc. v. Boeing Co.*, 2022 WL 3346398, at *11 (W.D. Wash. Aug. 12, 2022). The fact that the court has not yet ruled on CMC’s 12(b)(6) arguments is not dispositive. *See Del Valle v. Trivago GMBH*, 2023 WL 5141699, at *6 (S.D. Fla. Aug. 10, 2023), *aff’d*, 2025 WL 1443951 (11th Cir. May 20, 2025) (dismissing case for failure to state claim with prejudice after reversal of prior dismissal for lack of personal jurisdiction where all amendments occurred before dismissal for failure to state claim).

Cox does not proffer any new allegations that could be added to the FAC to fix any of the flaws in his claims. *See Carrico v. City & Cnty. of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011) (holding amendment was futile where plaintiff failed to propose “specific allegations that might rectify” his deficiencies); *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1052 (9th Cir. 2008) (“Appellants fail to state what additional facts they would plead if given leave to amend. . . . Accordingly, amendment would be futile.”). And any amendment here would clearly be futile. Nothing Cox could add in an amendment can change the fact that his claims are barred by Section 230, that he has no private right of action under CEA, that he never suffered an antitrust injury, and that CMC never stated it was ranking cryptocurrencies solely based on market cap. And no amendment could change the fact that HEX did not appear on CMC’s homepage even before the Suppression Period (and before Cox alleges Binance purchased an interest in CMC), which makes all of Cox’s claims implausible. Any new allegations Cox might add by amendment would inevitably be inconsistent with this fundamental fact. *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296–97 (9th Cir. 1990) (denying leave to amend where plaintiff would be required to allege a new inconsistent theory of harm).

The FAC should be dismissed with prejudice.

1 RESPECTFULLY SUBMITTED this 17th day of October, 2025.
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29 *Attorneys for Defendant CoinMarketCap
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on October 17, 2025, I electronically transmitted the foregoing
3 document to the Clerk of the Court through the CM/ECF system, which will send a Notice
4 of Electronic Filing to all CM/ECF registrants for this matter.

5 _____
6 */s/ Andrea S. Tazioli* _____

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